October 31, 2022

George Bogdan
New York Department of Financial Services
One State Street, 20th Floor
New York, NY 10004

Re: Proposed New Rule 23 NYCRR 600

Dear Mr. Bogdan:

On behalf of the American Financial Services Association ("AFSA"),[1] thank you for the opportunity to provide comments on the Department of Financial Services' ("DFS") proposed Disclosure Requirements for Certain Providers of Commercial Financing Transactions (23 NYCRR 600). We appreciate DFS' efforts to clarify the requirements for providers offering commercial financing and the Department's consideration of our previous comments. We believe clear rules that reflect the statute benefit consumers and financial institutions alike, and we look forward to continuing to engage with the Department as this rulemaking process moves forward.

Though AFSA members primarily offer consumer credit, our members also provide financing to commercial entities. Many AFSA members are also regularly engaged with New York's automobile dealers to provide them with the financial services necessary to enable these dealers to acquire their inventories of vehicles—known as "floorplan" lending—and other similar lines of credit. Floorplan financing and other credit arrangements in our industry are standard transactions that are already well-understood by sophisticated business parties.

Voluntary TILA disclosures

Although the federal Truth in Lending Act (TILA) does not apply to commercial transactions, many financial institutions currently provide TILA disclosures to certain commercial borrowers. For instance, a vehicle purchased by a small business entity and funded through a retail installment sales contract would not be subject to TILA because it is a commercial transaction, but a TILA disclosure may still be provided to inform the small business and facilitate the transaction. Similar to New York's commercial disclosure law and the regulations in 23 NYCRR 600, this practice assists the small business in understanding the transaction. However, as drafted, the regulations would require a specific New York-style disclosure to accompany the TILA disclosure in these transactions. In order to limit duplicative disclosures and to facilitate borrower understanding consistent with the intent of the statute and Revised Proposed 23 NYCRR 600, we respectfully request the following minor change to the proposed definition of Commercial Financing Section 600.1(m):

> (m) *Commercial Financing*, as defined in Financial Services Law section 801(b) does not include any transaction that is subject to the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, or for which a disclosure is provided that is compliant with such Act.

Exempt entities

We also reiterate our request from our previous comments that DFS add a section to the proposed rules restating the exemptions from Section 802.When the legislature enacted Article 8 of the Financial Services Law covering commercial financing, the legislature recognized that the requirements may not be a fit for certain types of transactions. For this reason, Section 802 expressly exempts certain entities and transactions, including depository institutions and certain commercial financing arrangements with vehicle dealers and rental companies, among others. Although DFS notes these exemptions in the Regulatory Impact Statement filed with the rulemaking, the proposed rules themselves do not specifically include the exemptions. We believe expressly including the exemptions in the rules themselves will reinforce the statute and make clear which entities and transactions are subject to the proposed requirements.

Thank you in advance for your consideration of our comments. If you have any questions or would like to discuss it further, please do not hesitate to contact me at mkownacki@afsamail.org or at (202) 469-3181.

Sincerely,

Matthew Kownacki
Director, State Research and Policy
American Financial Services Association